IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

THURSDAY, THE SIXTEENTH DAY OF JUNE
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE MR JUSTICE V.V.S.RAO

WRIT PETITION NO : 1769 of 1999

Between:

1 Kirloskar Electric Company Limited

No.6-3-666/B, Deccan Chambers
2nd Floor, Somajiguda, Hyderabad - 500 082
rep.by its Area Manager, Mr.Sanjay Gadhalay,

S/o.G.V.Rao
2 M/s. Farm Aids, 143, R.P.Road, Secunderabad - 500 003

..... PETITIONERS

AND

The Inspector,

Legal Metrology (Weights and Measures) Dept.,

Hyderabad

.....RESPONDENT

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court may be pleased to issue a writ, direction or order especially in the nature of mandamus declaring the seizure of the Electric Motor manufactured by the first petitioner company as illegal and arbitrary and consequently direct the respondents to release the seized motor.

Counsel for the Petitioners:MR.S.RAVI

Counsel for the Respondent: GP FOR CIVIL SUPPLIES

WRIT PETITION NO : 14763 of 2000

Between:

1. M/S. Kirloskar Electric Company Limited,

No.6-3-666/B, Deccan Chambers,

2nd Floor, Somajiguda, Hyderabad,

Rep. By its Branch Manager Mr.C.V.Subramanyam

S/o.Late C.P.Gour

2. M/s.Padmalaya Engineering & Co.,

D.No.12-6-1, Chinasttar Street, Tarapet,

Vijayawada

..... PETITIONERS

AND

1. The District Inspector,

Legal Metrology, Weights & Measures

Vijayawada

2. The Commissioner,

Department of Weights & Measures,

Hyderabad.

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court may be pleased to issue a writ, direction or order especially in the nature of writ of mandamus declaring the seizure of the Electric Motor manufactured by the first petitioner company as illegal and arbitrary and consequently direct the respondents to release the seized motor.

Counsel for the Petitioners:MR.S.RAVI

Counsel for the Respondents: GP FOR CIVIL SUPPLIES

The Court made the following :

THE HON'BLE SRI JUSTICE V.V.S.RAO

WRIT PETITION NOs.1769 OF 1999; AND

WRIT PETITION NO.14763 OF 2000

COMMON ORDER:

These two Writ Petitions are filed by M/s.Kirloskar Electric Company Limited, which is a company engaged in manufacture of electric motors and other things. First Writ Petition was filed seeking a declaration that the seizure of the electric motors manufactured by the company is illegal, arbitrary and without authority of law. Second Writ Petition is filed when the District Inspector of Legal Metrology Department, Vijayawada addressed a letter to the company requiring them to furnish names and particulars of the persons responsible for the alleged offence committed under the provisions of the Standards of Weights and Measures Act, 1976 (for short, the Act) and the Standards of Weights and Measures (Packaged Commodities) Rules, 1977 (for short, the Rules). The two cases are clubbed and are being disposed of by this common order as cause of action in both the cases is almost similar.

First petitioner is a company and second petitioner in W.P.No.1769 of 1999 is its dealer. Similarly, in the second Writ Petition also second petitioner is a dealer of the first petitioner company. Under a panchanama dt.17.9.1998 the Inspector of Legal Metrology seized 0.75 KW rating electric motor manufactured by the company on the ground that maximum retail price is not mentioned on the carton in which electric motor is sold. It was alleged in the panchanama that the petitioners contravened the provisions of Section 39 of the Act read with Rules 4, 6 and 23 of the Rules. While admitting the Writ Petition this Court passed interim orders restraining the Inspector of Legal Metrology Department from seizing electric motors manufactured by the company and sold through retail outlets. When the matter was pending before this Court, the Inspector of Legal Metrology Department, Vijayawada, addressed a letter dt.21.6.2000 proposing to launch prosecution. This Court while admitting the second Writ Petition passed interim orders directing the District Inspector as well as the Commissioner of the Department not to seize any electric motor manufactured and marketed by the first petitioner company if the package contains a certificate that the same is not intended for inter-state trade or commerce and is intended to be sold in the State of Andhra Pradesh.

It is the case of the first petitioner company that the provisions of the Act and the Rules are applicable only to those packaged commodities that are sold in the inter-

state trade and commerce and that the seized electric motors were not intended for inter-state trade or commerce. It is also contended that the electric motor cannot be treated as packaged commodity or a commodity in a packaged form attracting the provisions of Section 39, and Rules 4, 6 and 23 of the Rules.

The respondents have filed counter affidavits in both the Writ Petitions. A reference to the counter affidavit filed in W.P.No.14763 of 2000 would be suffice. It is stated that a case was registered on 12.1.2000 against first petitioner company and one M/s.Padmalaya Engineering Company, Vijayawada (petitioner No.2) for not marking retail sale price with proper price legend on the package containing one unit of induction motor KAA 37/XV-1190 and thereby they violated Rules 2(f), 6(1)(f) and 23(1) of the Rules. The case was filed as S.T.C.No.58 of 2000 on the file of the Court of II Metropolitan Magistrate, Vijayawada. The other contentions and allegations made by the petitioners are denied. The allegation that the induction motors are not intended to inter-state trade is not denied nor there is any proper explanation in the counter affidavit as to how the electric motors manufactured by the first petitioner company can be treated as commodity in packaged form or packaged commodity for the purpose of the Act and the Rules.

Learned counsel for the petitioners, Sri S.Ravi, and learned Government Pleader for Legal Metrology Department Sri P.Lakshma Reddy reiterated the respective stand in the pleadings. They also brought to the notice of this Court a recent judgment delivered by me in **Eureka Forbes Limited v. Union of India** wherein this Court dealing with the case of vacuum cleaners manufactured by Eureka Forbes Limited held that though vacuum cleaner is delivered to a purchaser in cardboard carton, the same cannot be treated as packaged commodity requiring compliance with the provisions of the Act and the Rules.

After perusing the judgment of this Court and hearing the learned counsel for the petitioners, this Court is convinced that though induction electric motors manufactured by first petitioner company are delivered to the purchasers in cardboard carton, the same cannot be treated as packaged commodity. When a manufacturer in law is not required and when the commodity is not packaged in the absence of a customer and when the commodity can be made available for verification and inspection of prospective buyer at the time of purchase, the electric motor cannot be treated nor construed as packaged commodity. Merely because manufacturer or dealer delivers the electric motor in cardboard carton, the same cannot be treated as packaged commodity for the purpose of the Act as defined in Section 2(b) of the Act or Rule 2(l) of the Rules. To be treated a commodity as pre-packed commodity, the essential ingredient is that the manufacturer should pack and seal the commodity without purchaser being present at the place where the commodity is packed and such packaged commodity is not ordinarily opened before the sale is completed. Dealing with this aspect of the matter in **Eureka Forbes Limited v. Union of India** (supra), this Court after referring to various provisions of the Act and the Rules, held as under.

> Therefore, Rule 3 read with the definition of pre-packed commodity in Rule 2(1) of the Rules as well as the definition of commodity in packaged form as

> defined in Section 2(b) of the Act would lead to a conclusion that unless the manufacturer, packer or retailer intends to sell commodity in a packaged form as a pre-packed commodity or commodity in packaged form the Act and the Rules have no application. There are internal aids in the Legislature to support this conclusion. In interpreting a law which includes delegated legislation the statute should be read as a whole, then chapter by chapter, Section by Section and words by words. When there is ambiguity, obscurity or inconsistency in the statute or provision, an effort must be made to give effect to all the part of the statute and no word or no provision can be treated as surplusage. There is a presumption in law that Legislature would not use the words, which are superfluous or surplusage. The intention of the Legislature can best be deduced by reading the statute as a whole and the language used keeping in view the objects for which the law has been enacted. While doing so, plain meaning of the words cannot be ignored. They should be ordinarily interpreted without adding, altering or modifying words and without stretching the meaning of the plain words used in the statute. [See *Bhavnagar University v. Palitana Sugar Mills Pvt. Ltd* (*2002 AIR SCW 4939*)].

After referring to an un-reported judgment of Madras High Court in **Philips India Limited v. Union of India**, and unreported judgment of this Court in **Pieco Electronics and Electricals Limited v. Union of India** this Court further held.

> These two precedents support the view taken by me that a vacuum cleaner though is provided a protective cover during transportation and handling and even for delivery to the customer after purchase, cannot be treated as 'pre-packed commodity' or 'package', it is not required to be sold in packed form. The prospective customer is at liberty to see the product and its demonstration and then buy the same with or without accessories. The mere fact that the petitioner prints the description of the product and its technical data does not make the Euroclean as a commodity in packed form or pre-packed commodity. …The contention of the respondents that vacuum cleaner falls within the definition of 'combination package' as defined in Rule 2(c) of the Rules and therefore covered by the provisions of the Act and the Rules is devoid of any merit. As per Rule 2(c) of the Rules 'combination package' means a package intended for retail sale, containing two or more individual packages, or individual pieces, of dissimilar commodities. When a vacuum cleaner is purchased, standard accessories form part of the unit. They are inseparable parts of the vacuum cleaner without which the utility of the machine will be nil. Vacuum cleaner with its standard accessories is sold as one single unit and it cannot be treated as 'combination package' or 'group package'.

Though the learned Government Pleader made strenuous effort to distinguish the decision, this Court is convinced that the principles discussed in **Eureka Forbes Limited v. Union of India** (supra) squarely apply to this case.

Accordingly, Writ Petition No.14763 of 2000 is allowed. In view of the same, no further orders are necessary in Writ Petition No.1769 of 1999. No costs.

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(V.V.S.RAO, J)

16.6.2005

bnr

That Rule Nisi has been made absolute as above.

Witness the Hon'ble H.A.C.J., Bilal Naziki, the Chief Justice on this Thursday the Sixteenth of June Two thousand and five.

To

1. The Inspector,

Legal Metrology (Weights and Measures) Department

Hyderabad

2. The District Inspector,

Legal Metrology (Weights and Measures) Department

Vijayawada

3. The Commissioner,

Department of Weights and Measures

Hyderabad

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